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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 COALITION TO LIMIT UNIVERSITY
12 EXPANSION,
Plaintiff

No. C 06-02753 CRB

ORDER REGARDING MOTION TO DISMISS

4 v.
5
6 GEORGE BLUMENTHAL, Acting
7 Chancellor, University, Santa Cruz, in his
8 official capacity; and DEVCON
9 CONSTRUCTION, INC.,
10

Defendants.

19 This Clean Water Act (“CWA”) lawsuit challenges construction and related activities
20 at the campus of the University of California Santa Cruz. Now pending before the Court is
21 George Blumenthal’s motion to dismiss, properly joined by Devcon Construction, Inc. After
22 carefully considering the papers filed by the parties, the Court concludes that oral argument
23 is unnecessary, see Local Rule 7-1(b), and rules as follows:

24 1. Defendants' motion to dismiss for lack of jurisdiction on the ground that the
25 complaint does not allege that defendants discharged pollution into waters with a "significant
26 nexus" to traditionally navigable waters is GRANTED with 30 days leave to amend. See
27 Northern California River Watch v. City of Healdsburg, 457 F.3d 1023, 1025 (9th Cir. 2006)
28 (citing Rapanos v. United States, 126 S.Ct. 2208, 2236-52 (2006) (Kennedy, J., concurring)).

1 2. Defendants' motion to dismiss for lack of jurisdiction on the ground that the 60-day
2 Notice Letter does not allege that defendants discharged pollution into waters with a
3 "significant nexus" to traditionally navigable waters is DENIED. See Defendants' Reply at
4 10 (arguing that the Notice is inadequate because it "fails to identify discharges to 'waters of
5 the United States' consistent with the criteria established in *Rapanos*"). Defendants do not
6 cite a single case that requires a plaintiff to allege facts in its Notice Letter showing that a
7 court would have jurisdiction of the plaintiff's CWA claims.

8 3. Defendants' motion to dismiss based on the complaint's failure to allege ongoing
9 CWA violations is GRANTED with 30 days leave to amend as the complaint's conclusory
10 allegations of ongoing violations are inadequate.

11 4. Defendant Blumenthal's unopposed motion to dismiss the Sixth, Seventh and Eighth
12 Causes of action to the extent they allege violations at the Cogeneration Plant and the Fleet
13 Services Facility are GRANTED without leave to amend.

14 **IT IS SO ORDERED.**

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16 Dated: October 25, 2006
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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE